

RE: House Bill 5313, "An Act Concerning Homemaker Services and Homemaker-Companion Agencies"

Written Testimony Submitted by:

David J. DeLancy, Franchise Owner
Shoreline Senior Services, LLC
D/B/A Home Instead Senior Care
2488 Boston Post Rd., Suite 12A
Guilford, CT 06437

As the owner/operator of the above noted "Employer Based" Homemaker-Companion Agency, I respectfully wish to submit my support for the intent of the above referenced House Bill. Furthermore, as a Board Member and Secretary of the CT Chapter of the Home Care Association of America (CT-HCAoA), I also wish to attest to the support of the intent of this bill by the CT-HCAoA membership.

For background and context, the HCAoA was founded on the principle that quality private duty home care has one model of care: to screen, employ, train, monitor and supervise caregivers; create a plan of care for the client; work toward a safe and secure environment for the person at home; and promote standards of conduct and quality for the industry. HCAoA-CT members employ several thousand caregivers providing care to thousands of elderly consumers across the state.

The specific rationale for my support of this measure is as follows:

- 1) Both at the Federal level AND the State level, it is the stated public policy for our governments to eradicate "Worker Misclassification."
- 2) In the matter of *Paffen v. Griswold Special Care*, 9019-BR-97, the Connecticut Dept. of Labor Board of Review found that a companion employed by Griswold Special Care was not an independent contractor under the "ABC test" and therefore was entitled to unemployment compensation benefits. The case was affirmed on appeal by the Superior Court and remains good law.
- 3) "Private Duty Caregivers" ARE employees. This class of worker is not a self-directed independent contractor, and MUST be classified as an Employee of an Employer. The misclassification of such workers as "independent contractors" leads to many potential hazards for both the worker AND the elderly consumer:
 - a. It is highly unlikely that there would be any contribution made towards unemployment insurance on the worker's behalf. If and when the time should come where such benefits were needed, there would be none available for the worker, and the consumer would be unknowingly responsible for these costs and any potential fines.
 - b. It is highly unlikely that a suitable "Worker's Compensation" insurance policy would be in place, thereby leaving the worker at risk of lost wages and medical costs in the event of a workplace accident, as well as leaving the elderly consumer at risk for the liability associated with such accidents.

- c. It is questionable, at the very minimum, that the wages earned by such a worker would ever be reported to the appropriate tax authorities, even though it is required of both an employee AND an independent contractor.
 - d. Our elderly consumers, and the responsible parties that assist them in arranging for this type of care (families, guardians, conservators, etc.), are typically solely focused on obtaining the best and most appropriate home care from a provider they have confidence in. Quite often, this process is undergone with the burden of physical and/or mental strain, and under the pressure of urgent need. Many or most do not have the sophisticated level of understanding of the issues and implications of the misclassification of workers, or given the aforementioned circumstances, just may not have the luxury to care.
- 4) Proper classification of private-duty caregivers as Employees would facilitate increased contributions to the State Unemployment Insurance Fund. CT's Unemployment fund has been insolvent since 2009. Responsible employers, such as me and those within the organization I represent, have paid for numerous special assessments to repay the loan, with interest, that was made from the Federal government to assure enough funds to pay unemployment benefits in CT. This bill would enable the state to more ably meet its obligations to unemployed workers without having to borrow from the federal government, or require legitimate employers to contribute more than their fair share to the fund.
- 5) Proper classification of private-duty caregivers as Employees would facilitate increased reporting of wages to income tax authorities by essentially bringing these earnings "above the table."

Finally, the CT-HCAoA supports an amendment to House Bill 5313 that specifies that homemaker-companion agencies and registries:

- are the employer of an employee who performs homemaker or companion services, and no such employee can be treated as an independent contractor;
- may not advise or cause an employee to execute any document stating that the employee is (i) an independent contractor or (ii) not eligible for unemployment compensation, wage and workers' compensation;
- Cannot register as an employment agency.

I wish to thank you for the valuable time you have committed to this bill and its related testimony.
Respectfully submitted by, DAVID J. DeLANCY, on this 11th day of March, 2014.